

California Business, Transportation and Housing Agency
Small Business Loans and Guarantees
Title 10, Chapters 7

INITIAL STATEMENT OF REASONS

Sections 5000. Definitions

SPECIFIC PURPOSE OF THE REGULATION

The purpose of the revisions is to make additions and technical changes to definitions that are needed as the result of modifications to other sections of the program regulations. The changes consist of:

- Adding the term “Law” to represent the California Small Business Financial Development Corporation Law. That statute is cited in revised language in other sections of the regulations.
- Adding the term “Master Agreement” to reflect a concept being incorporated into the program regulations.
- Re-numbering and re-lettering subsections accordingly.

NECESSITY

State chartered financial development corporations (FDCs) serve as intermediary re-lenders for farm loans using funds borrowed from their trust fund account in the small business loan guarantee trust fund. Modifications to other sections of the regulations will allow funds for farm loans to be disbursed to FDCs through a master credit agreement. The changes to section 5000 are necessary because they define terms that are incorporated into those modifications.

TECHNICAL, THEORETICAL, AND /OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

BTH did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

**REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY’S
REASON FOR REJECTING THOSE ALTERNATIVES**

No other alternatives were presented to or considered by BTH. The proposed regulations have been adopted under the authority of Corporations Code section 14024 in order to implement, interpret, and make specific Corporation Code section 14070.

**REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT
WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS**

BTH has not identified any alternatives that would lessen any adverse impact on small businesses.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The proposed regulation would not have any significant adverse impact on any business since the proposal simply adds terminology necessary to define actions taken in other sections of the program regulations.

EFFORTS TO AVOID CONFLICT WITH AND DUPLICATION OF FEDERAL REGULATIONS - FOR ENVIRONMENTAL PROTECTION AGENCIES, THE RESOURCES AGENCIES OR THE OFFICE OF THE STATE FIRE MARSHALL

Not applicable.

Section 5110. Farm Loan Definitions

SPECIFIC PURPOSE OF THE REGULATION

The purpose of the revisions is make substantive and technical changes to farm loan program terms. The changes are necessary for clarification and to define actions being taken in other sections of the program regulations that are being revised. The changes consist of:

- Allowing up to 25% of a trust fund account to be comprised of the total outstanding loan balances of loans with a remaining term to maturity of over 84 months (seven years).
- Clarifying that the loan from BTH to the FDC for the purpose of re-lending to a farm borrower shall be at 2% below the prime rate as listed in the western edition of the Wall Street Journal for each day that funds are owed to BTH
- Allowing the FDC to loan funds to the farm borrow at a maximum 4% above the prime interest rate;
- Redefining existing terms to incorporate the concept of a master credit agreement into the farm loan program.
- Restructuring existing definitions to make them more logical by deleting language from existing definitions and incorporating it into other definitions already present.
- Deleting language for obsolescence or for no longer being necessary as a result of incorporation of the master credit agreement concept.
- Making grammatical improvements.
- Re-numbering and re-lettering subsections accordingly.

NECESSITY

Incorporation of the concept of a master credit agreement into the farm loan program necessitates revising existing definitions and deleting language that is no longer applicable. These changes are necessary for conformance with the process changes made in other sections of the program regulations.

Clarifying that the loan from BTH to the FDC shall be at 2% below the prime rate as listed in the western edition of the Wall Street Journal for each day that funds are owed to BTH makes clear what the intention of the regulation is. As currently written, the regulation is not clear that the loan shall be at a variable rate. However, that has been the practice between the FDCs and BTH.

Allowing the FDC to loan funds to the farm borrow at a maximum 4% above the prime interest rate recognizes the credit quality of the borrowers, who would not be able to obtain financing without the FDC loan and a guarantee from the USDA, while still maintaining a cap. It also recognizes the cost of administering the farm loan program and is consistent with market conditions as small business loans are typically 2% to 5% above the prime rate.

Allowing up to 25% of a trust fund account to be comprised of the total outstanding loan balances of loans with a remaining term to maturity of over 84 months will maintain the intent of the regulation to ensure that adequate funds are available annually to meet the demand for farm loans, but provide for easier monitoring as the current regulation is confusing and subject to interpretation.

TECHNICAL, THEORETICAL, AND /OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

BTH did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASON FOR REJECTING THOSE ALTERNATIVES

No other alternatives were presented to or considered by BTH. The proposed regulations have been adopted under the authority of Corporations Code section 14024 in order to implement, interpret, and make specific Corporation Code section 14070.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

BTH has not identified any alternatives that would lessen any adverse impact on small businesses.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The 1% increase in the cap on the interest rate that the FDC may charge a farm borrower would have an insignificant impact on the business. Those borrowers subject

to the 4% above prime interest rate would pay an estimated \$1,300 per year in additional interest, or about \$108 per month. The 1% increase will allow financing to be structured consistent with market conditions as program borrowers are unable to obtain conventional financing because of risk. That additional cost will provide revenue necessary for the lending FDC to administer its farm loan program and help make capital available to farm operations that would otherwise not be able to obtain it.

EFFORTS TO AVOID CONFLICT WITH AND DUPLICATION OF FEDERAL REGULATIONS - FOR ENVIRONMENTAL PROTECTION AGENCIES, THE RESOURCES AGENCIES OR THE OFFICE OF THE STATE FIRE MARSHALL

Not applicable.

Section 5111. Disbursement of Farm Lender Loan Funds

SPECIFIC PURPOSE OF THE REGULATION

The proposed changes will modify the process by which an FDC requests disbursement of trust funds from BTH for the purpose of re-lending those funds to a farm borrower.

NECESSITY

Statute requires that any funds loaned to an FDC to make direct farm loans be evidenced by a credit agreement between the FDC and BTH. Since the inception of the farm loan program, the credit agreement has been a series of promissory notes between the FDCs and BTH to provide funding for individual farm borrower loans. BTH has determined that the process is inefficient, redundant, and paperwork intensive, and does not provide any more oversight and control than would a more streamlined system. Because farm loans must comply with the requirements of the U. S. Department of Agriculture's Guaranteed Farm Loan Program, disbursement of funds to an FDC is essentially ministerial. Section 5111 requires an application review process that is outdated and was designed for the use of promissory notes to disburse funds to FDCs. The proposed changes will modify the process by which an FDC requests trust funds intended for farm loans by simplifying the steps and creating a process under which a master credit agreement may be used.

TECHNICAL, THEORETICAL, AND /OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

BTH did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASON FOR REJECTING THOSE ALTERNATIVES

No other alternatives were presented to or considered by BTH. The proposed regulations have been adopted under the authority of Corporations Code section 14024 in order to implement, interpret, and make specific Corporation Code section 14070.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

BTH has not identified any alternatives that would lessen any adverse impact on small businesses.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The proposed regulation would not have any significant adverse impact on any business since the proposal only modifies the process by which FDCs request disbursement of funds to re-lend to farm borrowers.

EFFORTS TO AVOID CONFLICT WITH AND DUPLICATION OF FEDERAL REGULATIONS - FOR ENVIRONMENTAL PROTECTION AGENCIES, THE RESOURCES AGENCIES OR THE OFFICE OF THE STATE FIRE MARSHALL

Not applicable.

Section 5112. Release of Farm Loan Funds

SPECIFIC PURPOSE OF THE REGULATION

The purpose of the revision is to employ enhanced nomenclature related to the lending process and incorporate a name change to one of the terms revised in section 5110.

NECESSITY

The changes are needed to conform section 5112 with other changes to the program regulations. The changes are technical and have no regulatory effect.

TECHNICAL, THEORETICAL, AND /OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

BTH did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASON FOR REJECTING THOSE ALTERNATIVES

No other alternatives were presented to or considered by BTH. The proposed regulations have been adopted under the authority of Corporations Code section 14024 in order to implement, interpret, and make specific Corporation Code section 14070.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

BTH has not identified any alternatives that would lessen any adverse impact on small businesses.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The proposed regulation would not have any significant adverse impact on any business since the proposed changes are strictly technical.

EFFORTS TO AVOID CONFLICT WITH AND DUPLICATION OF FEDERAL REGULATIONS - FOR ENVIRONMENTAL PROTECTION AGENCIES, THE RESOURCES AGENCIES OR THE OFFICE OF THE STATE FIRE MARSHALL

Not applicable.

Section 5113. Accounting and Reporting

SPECIFIC PURPOSE OF THE REGULATION

The purpose of the revision is to incorporate a name change to one of the terms revised in section 5110, and to delete reference to a "Reserve" that does not exist.

NECESSITY

The changes are needed to conform section 5113 with other changes to the program regulations, and to delete reference to a non-existent "Reserve" for funding farm loans.

TECHNICAL, THEORETICAL, AND /OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

BTH did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASON FOR REJECTING THOSE ALTERNATIVES

No other alternatives were presented to or considered by BTH. The proposed regulations have been adopted under the authority of Corporations Code section 14024 in order to implement, interpret, and make specific Corporation Code section 14070.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

BTH has not identified any alternatives that would lessen any adverse impact on small businesses.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The proposed regulations would not have any significant adverse impact on any business since the proposal only incorporates modification to the name of an existing term and deletes reference to a "Reserve" that does not exist.

EFFORTS TO AVOID CONFLICT WITH AND DUPLICATION OF FEDERAL REGULATIONS - FOR ENVIRONMENTAL PROTECTION AGENCIES, THE RESOURCES AGENCIES OR THE OFFICE OF THE STATE FIRE MARSHALL

Not applicable.

Section 5114. Defaults

SPECIFIC PURPOSE OF THE REGULATION

The purpose of the revision is to clarify language relating to farm loan defaults, and to incorporate a name change to one of the terms revised in section 5110.

NECESSITY

The changes are needed to clarify the process related to a farm loan default, and to conform section 5114 with other changes to the program regulations; specifically, a revision to a defined term.

TECHNICAL, THEORETICAL, AND /OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

BTH did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASON FOR REJECTING THOSE ALTERNATIVES

No other alternatives were presented to or considered by BTH. The proposed regulations have been adopted under the authority of Corporations Code section 14024 in order to implement, interpret, and make specific Corporation Code section 14070.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

BTH has not identified any alternatives that would lessen any adverse impact on small businesses.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The proposed regulations would not have any significant adverse impact on any business since they are technical in nature and relate to the steps and FDC must take in the event of a farm loan default.

EFFORTS TO AVOID CONFLICT WITH AND DUPLICATION OF FEDERAL REGULATIONS - FOR ENVIRONMENTAL PROTECTION AGENCIES, THE RESOURCES AGENCIES OR THE OFFICE OF THE STATE FIRE MARSHALL

Not applicable.

Section 5116. Sale of the Guaranteed Portion of the Farm Borrower Loan

SPECIFIC PURPOSE OF THE REGULATION

The purpose of the revision is to clarify language relating to the sale of the guaranteed portion of a farm loan in the secondary market, and to delete reference to a “Reserve” that does not exist.

NECESSITY

The changes are needed to clarify the process related to selling the guaranteed portion of a farm loan in the secondary market, and to delete reference to a non-existent “Reserve” for funding farm loans.

TECHNICAL, THEORETICAL, AND /OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

BTH did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY’S REASON FOR REJECTING THOSE ALTERNATIVES

No other alternatives were presented to or considered by BTH. The proposed regulations have been adopted under the authority of Corporations Code section 14024 in order to implement, interpret, and make specific Corporation Code section 14070.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The BTH has not identified any alternatives that would lessen any adverse impact on small businesses.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The proposed regulations would not have any significant adverse impact on any business since the proposal deals with process an FDC must follow when selling the guaranteed portion of a farm loan in the secondary market.

EFFORTS TO AVOID CONFLICT WITH AND DUPLICATION OF FEDERAL REGULATIONS - FOR ENVIRONMENTAL PROTECTION AGENCIES, THE RESOURCES AGENCIES OR THE OFFICE OF THE STATE FIRE MARSHALL

Not applicable.

Section 5117. Payments

SPECIFIC PURPOSE OF THE REGULATION

The purpose of the revision is to incorporate a name change to one of the terms revised in section 5110, to delete reference to a “Reserve” that does not exist, and to make grammatical improvements.

NECESSITY

The changes are needed to incorporate a revised term into section 5117, and make the regulations more accurate by deleting reference to a non-existent “Reserve” for funding farm loans.

TECHNICAL, THEORETICAL, AND /OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

BTH did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY’S REASON FOR REJECTING THOSE ALTERNATIVES

No other alternatives were presented to or considered by BTH. The proposed regulations have been adopted under the authority of Corporations Code section 14024 in order to implement, interpret, and make specific Corporation Code section 14070.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The BTH has not identified any alternatives that would lessen any adverse impact on small businesses.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The proposed regulations would not have any significant adverse impact on any business since the changes are technical in nature.

EFFORTS TO AVOID CONFLICT WITH AND DUPLICATION OF FEDERAL REGULATIONS - FOR ENVIRONMENTAL PROTECTION AGENCIES, THE RESOURCES AGENCIES OR THE OFFICE OF THE STATE FIRE MARSHALL

Not applicable.

Section 5119. Use of Reserve Funds

SPECIFIC PURPOSE OF THE REGULATION

The purpose of the revision is to delete reference to a “Reserve” that does not exist.

NECESSITY

The change is needed for accuracy and to avoid confusion as the "Reserve" discussed in section 5119 to serve as a source of funding for farm loans does not exist and is not expected to exist.

TECHNICAL, THEORETICAL, AND /OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

BTH did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASON FOR REJECTING THOSE ALTERNATIVES

No other alternatives were presented to or considered by BTH. The proposed regulations have been adopted under the authority of Corporations Code section 14024 in order to implement, interpret, and make specific Corporation Code section 14070.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The BTH has not identified any alternatives that would lessen any adverse impact on small businesses.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The proposed regulations would not have any significant adverse impact on any business since the proposal is intended to make a correction to the program regulations by deleting a section that discusses a reserve of funds that has never existed.

EFFORTS TO AVOID CONFLICT WITH AND DUPLICATION OF FEDERAL REGULATIONS - FOR ENVIRONMENTAL PROTECTION AGENCIES, THE RESOURCES AGENCIES OR THE OFFICE OF THE STATE FIRE MARSHALL

Not applicable.